

PURRINGTON & McCONNELL
John H. McConnell (JM-6374)
82 Wall Street - Suite 1110
New York, New York 10005
(212) 943-5757

08 CV 3915 (RWS)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

R E C E I V E D
APR 25 2008
U.S.D.C. S.D.N.Y.
CASHIERS

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RIMAC INTERNACIONAL CIA. DE SEGUROS Y
REASEGUROS, S.A.
a/s/o Telefonica Moviles S.A.,

Plaintiff,

-against-

COMPLAINT

EXEL GLOBAL LOGISTICS, INC., CIELOS DEL
PERU S.A., GALAXY AVIATION CARGO INC.,
CHECKMATE PRIORITY EXPRESS, INC., and
CONTINENTAL FREIGHTWAYS, INC. d/b/a
Fineline Trucking,

Defendants.

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The Plaintiff herein by its attorneys, Purrington &
McConnell, complaining of the above-named defendants, alleges upon
information and belief:

FIRST: This Court has jurisdiction of these claims
pursuant to 28 U.S.C. §1331 in that they arise under the laws and
treaties of the United States, including the Warsaw Convention,
49 Stat. 3000, with respect to one or more claims, and fall within
the Court's federal question, pendent, ancillary, and/or supple-
mental jurisdiction as to the remaining claims.

SECOND: In the alternative, this Court has diversity jurisdiction of this action under 28 United States Code §1332, in that the plaintiff is an entity incorporated in and the subject of a foreign state; the defendants are corporations incorporated or existing under the laws of one or more of the states of the United States; and the matter in controversy exceeds the sum or value of eight hundred thousand dollars, exclusive of interest and costs.

THIRD: At all material times hereinafter mentioned, plaintiff, RIMAC INTERNACIONAL CIA. DE SEGUROS Y REASEGUROS, S.A., was and still is an insurance company incorporated in and existing under the laws of the state of Peru, and is a citizen and subject of the Sovereign State of Peru, a foreign state, domiciled at, and with an office and place of business at, 475 Las Begonias - 3rd Floor, San Isidro, Lima, Peru; and is the subrogee of Telefonica Moviles S.A., of Lima Peru (hereinafter "Telefonica").

FOURTH: At all material times hereinafter mentioned, defendant, EXEL GLOBAL LOGISTICS INC. (hereinafter "Exel"), was and still is a corporation organized under the laws of one of the states of the United States, with an agency or office and place of business at 230-39 Industrial Airport Center Blvd., Suite 1000 Building B, Springfield Gardens, New York 11413.

FIFTH: At all material times hereinafter mentioned, defendant, CIELOS DEL PERU S.A. (hereinafter "Cielos"), was and still is a corporation organized under the laws of one of the states of the United States, and now operating under the name Cielos Airlines, with an agency or office and principal place of business at 1851 N.W. 68th Avenue, Bldg. 706, Suite 225, Miami, Florida 33122.

SIXTH: At all material times hereinafter mentioned, defendant, GALAXY AVIATION CARGO INC. (hereinafter "Galaxy"), was and still is a corporation organized under the laws of one of the states of the United States, and now operating under the name Galaxy Centurion Air Cargo, and may be or is a subsidiary of Cielos Airlines, with an agency or office and place of business at 600 Bayview Avenue, Inwood, NY 11096.

SEVENTH: At all material times hereinafter mentioned, defendant, CHECKMATE PRIORITY EXPRESS, INC. (hereinafter "Checkmate"), was and still is a corporation organized under the laws of one of the states of the United States, with an agency or office and place of business at 3340 D Greens Road - Suite 700, Houston, Texas 77032.

EIGHTH: At all material times hereinafter mentioned, defendant, CONTINENTAL FREIGHTWAYS, INC. d.b.a Fineline Trucking, (hereinafter Continental"), was and still is a corporation organized under the laws of one of the states of the United States, with an agency or office and place of business at 3560 N.W. 34th Street, Miami, Florida 33142, or alternatively, at 12800 N.W. 113th Ct., Medley, Florida 33178.

NINTH: At and during all the times hereinafter mentioned, the defendants were common carriers of merchandise for hire and owned, operated, managed, chartered and/or controlled the aircraft, vehicles, trucks, trailers, properties, and warehouses that were used or were to be used for the movement, storage and delivery of the cargo which is the subject of this action.

TENTH: The cargo which is the subject of this action consisted of two lots totaling 15,000 Nokia cell phones, purchased by the plaintiff's subrogor from Nokia, Inc., of Ft. Worth, TX.

ELEVENTH: The first lot is described as 10,000 phones, Model 1600bMSPE_LS, with a unit value of US\$57.00 each, for a total value of \$570,000.00. They were packaged 5 phones to a box, for a total of 2,000 boxes. The total weight of this lot was 11,375 pounds (5,175 kilograms).

TWELFTH: The second lot is described as 5,000 phones, Model 3220BMSPE_SLS MX, with a unit value of US\$90.00 each, for a total value of \$450,000.00. They were packaged 5 phones to a box, for a total of 1,000 boxes. The total weight of this lot was 5,795 pounds (2,584 kilograms). 2534 + 114 = 2648

THIRTEENTH: At the time of this loss, plaintiff's subrogor Telefonica had a contract with defendant Exel's Peruvian counterpart, Exel Global Logistics Sucursal del Peru S.A., (hereinafter "Exel Peru"), for the integrated transportation and customs clearance and delivery of all of its' international cargo.

FOURTEENTH: When this cargo shipment was scheduled, Exel Peru contacted defendant Exel to commence the transportation. The defendant Cielos was nominated to perform the air transport.

FIFTEENTH: On or about April 25, 2006, the defendant Exel issued house airwaybills (HAWB) numbers DFW01 274776 and DFW01 274777 for the transportation of the two lots of mobile phones, from the shipper Nokia's Irving, TX warehouse, to the consignee Telefonica's Lima, Peru facility. The departure airport was listed as Dallas-Fort Worth (DFW) International airport. True copies of these two airwaybills are attached hereto, and form a part hereof.

SIXTEENTH: The 2,000 box lot of cargo, on 25 pallets, was allegedly received into an Exel warehouse or freight station on or about April 24, 2006, from an Exel truck under Pro No. 275518 and placed at warehouse location DFW01-A-1; Warehouse Receipt Number 24047070 was issued. A true copy of this warehouse receipt is attached hereto, and forms a part hereof.

SEVENTEENTH: The 1,000 box lot of cargo, on 13 pallets, was allegedly received into an Exel warehouse or freight station on or about April 27, 2006, from an Exel truck under Pro No. 275864 and placed at warehouse location DFW01-B-1; Warehouse Receipt Number 24047266 was issued. A true copy of this warehouse receipt is attached hereto, and forms a part hereof.

EIGHTEENTH: On or about April 24, 2006, the defendant Cielos issued a master airwaybill (MAWB) number 529 1143 4975 to defendant Exel as shipper, for the transportation of both lots of mobile phones together, from the defendant Exel's Dallas-Fort Worth area facility, to the consignee DHL Danzas Air & Ocean Peru S.A., who was an agent for defendant Exel in Lima, Peru.

NINETEENTH: Defendant Exel then contacted Cielos' subsidiary Galaxy to fulfil the transportation.

TWENTIETH: For reasons that are not entirely clear, defendant Galaxy was unable to transport the cargo by air directly from Dallas, TX, either to Miami or to Lima, and thereupon opted to subcontract the services of defendant Checkmate to move the cargo by truck from Dallas to Miami.

TWENTY-FIRST: Defendant Checkmate issued Bill of Lading Number 136971 dated April 25, 2006 for transportation of the cargo from Coppell, TX to Miami, FL. The shipper is listed as the defendant Exel, and the consignee is shown as the defendant Cielos. A true copy of this bill of lading is attached hereto, and forms a part hereof.

TWENTY-SECOND: The destination shown on defendant Checkmate's bill of lading is Cielos' facility serving the Miami International Airport (MIA). The lading also appears to show that a Checkmate truck driver picked up the cargo from defendant Exel.

TWENTY-THIRD: Alternatively, one of the defendants picked up the cargo from the shipper Nokia, or other location, and moved it to a Dallas-Ft. Worth area location for transfer to defendant Continental.

TWENTY-FOURTH: Thereafter, the defendant Checkmate contracted with the defendant Continental to effect the actual transportation of the cargo to Miami.

TWENTY-FIFTH: The defendant Continental's appointed driver, Juan A. Artze, picked up the cargo in the Dallas-Ft. Worth area on or between April 25th through April 27th, 2006. The transport vehicle was a 2004 Freightliner tractor, Florida license plate A8829U, coupled to a 53' Continental utility trailer, Florida license plate C7868T.

TWENTY-SIXTH: The entire tractor and trailer unit was hi-jacked in Port Lucie County, Florida, between about 1:30 a.m. and about 3:00 a.m. on April 28, 2006, while the driver was eating and taking a shower at the Flying J Truck Stop, 100 North Kings Highway, Ft. Pierce, FL, and before the cargo was delivered to Galaxy in Miami.

TWENTY-SEVENTH: The driver called the police, and police and FBI personnel investigated the incident. The Freightliner tractor was recovered by the Hialeah, FL police, without the trailer, on May 1, 2006, at the Gunderlin Ltd. parking lot at 3695 E. 11th Avenue, Hialeah, FL.

TWENTY-EIGHTH: The utility trailer, without any of the cargo, was recovered by the Miami-Dade, FL police on May 1, 2006, on the roadside near 3345 N.W. 116th Street, Miami, FL.

TWENTY-NINTH: The defendants received, accepted and agreed to transport the goods as described in the aforesaid warehouse receipts, airwaybills, and bills of lading, as common carriers, from Dallas, TX to Lima, Peru, and there deliver the same in like order and condition as when shipped, all in consideration of agreed freights thereupon paid or agreed to be paid, and in accordance with the valid terms of said warehouse receipts, airwaybills, and bills of lading above referred to then and there signed and delivered to the various shippers by the duly authorized agents of the defendants.

THIRTIETH: The defendants failed to make delivery of the cargo that had been shipped.

THIRTY-FIRST: By reason of the premises, the defendants breached, failed and violated their duties and obligations as common carriers, warehousemen, and bailees, and were otherwise at fault in negligence, or otherwise.

THIRTY-SECOND: At all material times plaintiff or plaintiff's subrogor was the insurer, shipper, owner, receiver, and / or the consignee of the shipments described herein, and as holder of the covering bills of lading was entitled to the delivery of said merchandise at destination in the same good order

and condition as when shipped, and plaintiff brings this action on its own behalf and as agent and trustee on behalf of and for the interests of all parties who may be or become interested in the said shipment, as their respective interests may ultimately appear.

THIRTY-THIRD: Plaintiffs have duly performed all duties and obligations on their part to be performed.

THIRTY-FOURTH: By reason of premises, plaintiff has suffered damages in the sum of US\$ 804,153.34, as nearly as may now be determined, no part of which has been paid, although payment thereof has been duly demanded.

WHEREFORE, Plaintiff prays:

1. That the process in due form of law according to the practice of this court may issue against each of the said defendants, citing them to appear and answer under oath all and singular the matters aforesaid;

2. That the Court will order, adjudge and decree that said defendants pay to plaintiff the damages sustained together with interest thereon and the costs and disbursements of this action; and

3. That plaintiff may have such other and further relief in the premises as in law and justice it may be entitled to receive.

Dated: New York, New York
April 25, 2008

PURRINGTON & McCONNELL
Attorneys for Plaintiff

John H. McConnell
By: _____
John H. McConnell (JM-6374)

82 Wall Street
New York, New York 10005
(212) 943-5757

LA COFTEL PHONES
LA ALLIANCE GATEWAY
ATTN: LINDA O'CONNOR
FORT WORTH

Dollars Name and Address

TEL: 149552000

1000234578

TELEFONICA MOVILES S.A.
AV. WASHINGTON 1333

LIMA 01

Identifying Carrier's Agent Name and City

MAIL NO.

Agents IATA Code

529 1143 4575

Account No.

All port of departure (Addr. of first carrier) and requested Routing

DALLAS F.O. INTERNATIONAL

to	By First Carrier	Route and Destination	to	by	Currency	Chg'd Carr	AMT	Rate	Declared Value for Carriage	Declared Value for
MTA 42		1 TM 142			USD			X		

Airport of Destination

Flight/Date

Arrival Date

Amount of Insurance

INSURANCE - If carrier offers insurance and such insurance
requested in accordance with conditions on reverse hereof
amount to be insured in figures in box marked amount of

Handling Information

R299725 R2935727

XXX

DOCS ATTACHED: COMM LAV. 87227690
KNOWN PER TSA D/B, TSA VERIFICATION #, P273DT1SWNP2064, NDR AES
13-2622043, -1008240818

These commodities, technology or software were exported from the United States in
accordance with the Export Administration Regulations. Diversion contrary to U.S. Law Prohibited.

No. of Pieces H/C	Gross Weight	Rate Class Commodity Item No.	Chargeable Weight	Rate Charge	Total	Nature and Quality of Goods (incl. Dimensions or Volume)
25	5175.0	KR	9999	6032.5	11160.13	TELEPHONE PARTS
			VOL & DIMS COUNTED	CMT		
				CMT		
						VOL: 36.193MTQ DIMS: 25 @ 121.9x101.6x116.8
25	5175.0	Prepaid	Weight Charge	Collect	Other Charges	11160.13
			Valuation Charge	11160.13		
					677.00	DWY
					175.00	F&E
					5730.86	1387.46
			Tax			
			Total other Charges Due Airline			
			Total other Charges Due Carrier			
			293.36			
			Total Paid	Total Collected		
			2562604.00	2562604.00		
			Currency Conversion Rates	1 USD = 0.8200000000000001		
				our charges in Best Currency		
			For Carrier Use Only at Originating	Charges H/C Shipment	Total Other Charges	

Original 3 - For Shipper

OPNO: 274777

ORIG:

E-21



ESTIFICO QUE LA PRESENTE COPIA FOTOSTATICA ES
IGUAL AL DOCUMENTO ORIGINAL QUE HE TENIDO A LA

VISTA

DE

16 MAR 2007

DE

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Exel Global Logistics
FSI - Freight Station Inventory

WAREHOUSE RECEIPT

FPUP (Pickup from customer)

FDLD (Received into warehouse)

Shipper: EAGLE GLOBAL			Trucker Name: EXEL	Trucker # 275518	
Consignee: TELEFONICA / PERU			Destination: ??		
Warehouse Location: DFW01 - A-1			SKID(S) SAID TO CONTAIN _____ PIECE(S) TO BE SHIPPED SKIDDED YES NO		
Piece(s)	Total Weight	Reweighed	Dimension(s): PIECE(S)	L	W
25	5143.0	KGM.	25	48.0	40.0
			H	46.0	WGT
					5143.0
24047070			Notepad: rh 25 skids		
Received By: Fausto Najera - FIS Whrs					
Delivered By:		Delivered To:			
MAWB (CONSOL.)		HAWB		Cutoff:	Charges:

Exel Global Logistics
FSI - Freight Station Inventory

WAREHOUSE RECEIPT

FPUP (Pickup from customer) : 27-APR-2006 16:50:00 CST
FDLD (Received into warehouse) : 27-APR-2006 17:21:22 CST

Shipper: NOKIA		Trucker Name: EXEL	Trucker Pro No.: 275864															
Consignee: TELEFONIA PERU		Destination: ??																
Warehouse Location: DFW01 - B-1		SKID(S) SAID TO CONTAIN _____ PIECE(S) TO BE SHIPPED SKIDDED YES NO																
Piece(s)	Total Weight	Reweighed																
13	2648.0	KGM.																
		Dimension(s): <table> <thead> <tr> <th>PIECE(S)</th> <th>L</th> <th>W</th> <th>H</th> <th>WGT</th> </tr> </thead> <tbody> <tr> <td>12</td> <td>48.0</td> <td>40.0</td> <td>47.0</td> <td>2534.0</td> </tr> <tr> <td>1</td> <td>48.0</td> <td>40.0</td> <td>32.0</td> <td>114.0</td> </tr> </tbody> </table>		PIECE(S)	L	W	H	WGT	12	48.0	40.0	47.0	2534.0	1	48.0	40.0	32.0	114.0
PIECE(S)	L	W	H	WGT														
12	48.0	40.0	47.0	2534.0														
1	48.0	40.0	32.0	114.0														
		Notepad: ZT																
Received By: Fausto Najera - FIS Whrs																		
Delivered By:		Delivered To:																
MAWB (CONSOL)		HAWB	Cutoff															
			Charges:															

cjelegs claim (1698x2197x2 tiff) [2]

CHECKMATE PRIORITY EXPRESS <i>The Evolution of Transportation</i>		DATE 25APR06	BILL OF LADING # 136971		
3340 D GREENS RD. SUITE 700 HOUSTON, TEXAS 77032 (281) 219-6611 PHONE (281) 219-8848 FAX		749 PORT AMERICA PLACE, SUITE 150 GRAPEVINE, TX 76051 (817) 481-8111 PHONE (817) 481-2397 FAX	8016 NW 29 TH STREET MIAMI, FL 33122 (305) 477-0103 PHONE (305) 477-4308 FAX		
SHIPPER NO. PREPAID <input type="checkbox"/> EXEL GLOBAL LOGISTICS		CONSIGNEE NO. COLLECT <input checked="" type="checkbox"/> CIELOS DEL PERU			
SHIPPER		CONSIGNEE			
STREET 600 FREEPORT PKWY #200		STREET MIAMI INT'L AIRPORT			
CITY COPPELL, TX 75109	STATE	ZIP CODE	CITY MIAMI, FL	STATE	ZIP CODE

The Shipper Agrees and Declares that the Value to the Property is Released to an Amount not Exceeding \$50.00 for Any Shipment of 100 Pounds or Less and Not Exceeding 0.50 Cents Per Pound for Shipments Weighing in Excess of 100 Pounds. Claims must be filed within 72 hours of delivery.

Higher Declared Values must be Quoted and Confirmed one week prior to shipment.

NO. OF PIECES	DESCRIPTION OF PIECES - SPECIAL MARKS	WEIGHT	RATE	CHARGES
38	529-1143 4975 TELEPHONE PARTS	17,105 ⁴		FREIGHT CHARGES
				PICK UP
				DELIVERY
				VALUATION CHARGES
				PROTECT CHARGES
				WAITING TIME
				EXCLUSIVE USE
				ADVANCE CHARGES
				C.O.D. →
				C.O.D. FEE →
			\$	\$
				▲ TOTAL CHARGES ▲
Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor signs the following statement:				

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

Signature of Consignee

RECEIVED BY		DATE	BUNDLED SHIPMENT IT#
DRIVERS NAME			THIRD PARTY BILLING
DRIVER'S SIGNATURE		DATE	NAME
TRUCKING COMPANY	TRUCK #	TRAILER #	ADDRESS
RECEIVED BY	DATE	CITY & STATE	
CONSIGNEE:			

NOT RESPONSIBLE FOR CONCEALED DAMAGE - NOT RESPONSIBLE FOR FREIGHT CLAIMS AFTER 72 HRS.